

## **REMARKS**

### **I. Introduction**

Claims 1 to 29 are pending in the application. Reconsideration in view of the following remarks is respectfully requested.

### **II. Information Disclosure Statement**

Applicants submit herewith in accordance with the duty of disclosure under 37 C.F.R. § 1.56 an Information Disclosure Statement, which includes references that were cited in an International Search Report, a copy of which is attached. Accordingly, it is respectfully submitted that the references be expressly considered during prosecution of the present application if not already done so, and that the references be made to appear on the "References Cited" on any patent to issue therefrom.

### **III. Rejection of Claims 1 to 29 under 35 U.S.C. § 103(a)**

Claims 1 to 29 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,673,382 ("the Cannon reference") in view of U.S. Patent No. 6,266,784 ("the Hsiao reference").

Claim 1 relates to method of creating a dynamic storage pool for data recovery, which includes selecting a protection policy scheme for replication of an application server data based on identified storage capabilities of an available storage area.

The Office Action admits that the Cannon reference does not disclose selecting a policy scheme for replication of an application server data based on identified storage capabilities, as recited in claim 1, and instead asserts that these features of claim 1 are disclosed by the Hsiao reference in column 2, lines 30 to 32, which state that:

In another aspect of the present invention, the recovery plan file for the source server is managed at the target server according to defined criteria under the control of the source server, such as under specified rules for backup, migration and expiration.

(Hsiao, column 2, lines 30 to 32). In managing the recovery plan file, however, the target server merely checks the database of the source server to see if the disaster recovery plan file should be deleted, and if it is due to expire, then the target server marks the file for deletion and deletes it in the manner proscribed by the source server. (Hsiao, column 7, lines 54

through column 8, line 2). Hence, this is not a protection policy scheme for replication of an application server data based on identified storage capabilities, as recited by claim 1, but simply a means for determining whether or not to delete the disaster recovery plan file.

The Cannon reference purports to relate to a disaster recovery system for backing up client data files, which restores client data to a server. However, for this to take place there must be a properly functioning server. The Hsiao reference refers to a method to recreate the server once functioning hardware is in place. (See Hsiao column 4, lines 51 to 55). However, the disaster recovery plan file, referred to by the Hsiao reference, does not include client data, but instead merely includes the “information, procedures, and executable instructions necessary to recover the storage management server.” (Hsiao, column 1, lines 55 to 57). Accordingly, the Cannon and Hsiao references refer two entirely separate and unrelated aspects of disaster recovery. Indeed, the Hsiao reference explicitly states that these two aspects of disaster recovery are different. (See Hsiao, column 4, lines 37 to 50).

To reconstruct a server, the Hsiao reference states that the disaster recovery plan file must be treated differently than the client data because it is used before the client data can be restored. In this regard, the Hsiao reference states that the disaster recovery plan file must be put into a specific storage pool for backup, and it must be logged whenever the file is moved. (Hsiao, column 7, lines 31 to 34). The Hsiao reference also states that the disaster recovery plan file must be deleted and replaced separately from client data, and that the file is to be given a grace period and not deleted immediately, and any deletion must be logged (Hsiao, column 8, lines 3 to 9).

The client data, by contrast, would never require the same special treatment given to the disaster recovery plan file. As the Hsiao reference states, “backup data from one period immediately outmodes that of the previous period” (Hsiao, column 1, lines 45 to 47). Accordingly, there is no motivation to apply the teachings of Hsiao reference to client data.

To reject a claim as obvious under 35 U.S.C. § 103, the prior art must describe or suggest each claim feature, and there must be a motivation or suggestion to modify or combine the features in the manner contemplated by the claim. (See Northern Telecom, Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). In this regard, it is respectfully submitted that the Cannon and Hsiao references, either alone or in combination, do not disclose, or even suggest, all of the features of claim 1, including the recited features of selecting a policy scheme for replication of an application server data based on the identified storage

capabilities, and moreover, even if the Cannon and Hsiao references were to disclose all of the features of claim 1 (which is not conceded), there is no motivation to combine them in the manner contemplated by claim 1. Accordingly, for at least these reasons claim 1 is allowable.

Claims 2 to 8, which depend either directly or indirectly from claim 1, and claims 9, 17 and 25, which recite features essentially analogous to claim 1, are allowable for at least the same reasons as claim 1.

Claims 10 to 16, which depend either directly or indirectly from claim 9, are allowable for at least the same reasons as claim 9.

Claims 18 to 24, which depend either directly or indirectly from claim 17, are allowable for at least the same reasons as claim 17.

Claims 26 to 29, which depend either directly or indirectly from claim 25, are allowable for at least the same reasons as claim 25.

In sum, it is respectfully submitted that claims 1 to 29 are allowable.

### CONCLUSION

For at least all the above reasons, the Applicants respectfully submit that this application is in condition for allowance. It is therefore respectfully requested that the objections and rejections be withdrawn, and that the case be allowed.

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Respectfully submitted,

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